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Case No.: 96-901

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

EDWARD RONWIN,

Plaintiff and Petitioner,

vs.

DORI ALTMAN,

Defendant and Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT COURT OF SOUTH DAKOTA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

In 1976, Ronwin was rear-ended in Phoenix, Arizona. (TT [Trial Transcript] p. 58, 211). Ronwin brought a lawsuit in Arizona claiming neck pain and personal impairment. (TT pp. 62, 214).

In 1991, Ronwin was rear-ended in Clive, Iowa. (TT pp. 160, 219). Ronwin commenced a lawsuit in Iowa claiming personal injury. (TT p. 225).

On March 26, 1993, Ronwin was rear-ended by Altman in Sioux Falls, South Dakota. Because Ronwin was not looking in his rear-view mirror, he did not see what happened. (TT p. 165, 235).

According to Altman, she stopped behind Ronwin at an intersection. (TT pp. 37, 124, 432). After Ronwin started into the intersection, she looked left to check

for traffic and moved ahead. (TT pp. 37, 124, 432). Because Altman did not see Ronwin stop again, she accidentally bumped him from behind. (TT pp. 37, 124, 432).

The investigating officer opined that Altman was traveling approximately five miles per hour at the time of impact. (TT pp. 100, 433). The Defendant's car was not damaged. (TT pp. 124, 433). The accident caused $745.18 of property damage to Ronwin's Cadillac. (TT 172). Although Altman admitted that the accident took place, Altman denied any legal liability for personal injury. (DA [Defendant's Appendix] pp. 1-2).

After the accident, Ronwin sought medical services from four separate orthopedic surgeons. (TT pp. 242, 266,

369, 380). None testified beyond a mere possibility that the 1993 accident caused Ronwin's shoulder problems. (TT p. 292, 331, 412). The only physician who treated the neck opined that Ronwin's neck problems were more likely than not related to the 1991 accident. (TT p. 364-65).

Ronwin commenced this action in Federal District Court in South Dakota based upon diversity of citizenship. (RA [Ronwin's Appendix] p. 27). Although Altman acknowledged that the parties were citizens of separate states, Altman denied that the amount in controversy exceeded $50,000. (DA pp. 1-2).

At trial, Ronwin served as his own attorney and expert witness. (TT 33, 181-82). The jury found for Altman. (DA p. 41). Ronwin's motion for a new trial

was denied. (DA p. 43). On November 15, 1995, Ronwin claims to have telephoned Juror Clinton Gunderson. (RA p. 79). According to Ronwin, Mr. Gunderson apparently declined to sign an affidavit. (RA p. 79).

Ronwin appealed to the Eighth Circuit Court of Appeals. No constitutional questions were raised on appeal. The Eighth Circuit affirmed the judgment of the District Court without a published decision. Ronwin's Petition for Rehearing was denied.

ARGUMENT

I.

NO COMPELLING REASON FOR GRANTING A PETITION FOR WRIT OF CERTIORARI HAS BEEN SHOWN

Supreme Court Rule 10 states in part that "Review on writ of certiorari is not

a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons."

Here, Ronwin appears to claim that this case merits review because of an important question of federal law which has not been, but should be settled by this Court. Specifically, Ronwin appears to claim that the law governing claims of juror misconduct has not been adequately developed. This is simply not the case.

In Tanner v. United States, 483 U.S. 107 (1987), this Court had the opportunity to interpret Federal Rule of Evidence 606(B), which provides that juror affidavits cannot be used to impeach a verdict "except that a juror may testify on the question whether extraneous prejudicial

information was improperly brought to the jury's attention or whether any outside influence was brought to bear upon any juror." Tanner, 483 U.S. at 121 (quoting Fed.R.Evid. 606(b)(Emphasis added). Eighth Circuit caselaw is consistent with this rule. In civil cases, "the exposure of jurors to materials not admitted into evidence mandates a new trial only upon a showing that the materials are prejudicial to the unsuccessful party." Banghart v. Origoverken, A.B., 49 F.3d 1302, 1306 (8th Cir. 1995)(emphasis added); see Peterson v. Gen. Motors Corp., 904 F.2d 436, 440 (8th Cir. 1990).

Further consideration of this subject by this Court is unnecessary for several reasons. First, Ronwin has failed to establish any prejudice. According to

Federal Rule of Civil Procedure 61, only alleged errors affecting the substantial rights of the parties warrant a new trial. In addition, 28 U.S.C. § 2111 provides that "[o]n the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to error or defects which do not affect the substantial rights of the parties."

Here, Ronwin claims that juror Gunderson visited the scene of the accident, took some measurements and concluded that Defendant was not going very fast at the time of the accident. Even if this is all true, the information gathered by juror Gunderson is consistent with the evidence adduced at trial.

Altman testified that she came to a complete stop behind Ronwin and then "bumped" Ronwin's vehicle after Ronwin started into the intersection and stopped again. (TT p. 432). The physical damage sustained by Ronwin's vehicle was negligible. (TT 106). The investigating officer concluded that Altman's vehicle was traveling approximately five miles per hour at the time of the accident. (TR 101). Because Ronwin did not see Altman's vehicle before the collision, he is in no position to refute Altman's testimony based upon direct observations. (TT p. 235).

Ronwin was wearing a seat belt and shoulder harness. (TT 233). Ronwin had pre-existing neck and shoulder injuries. (TT pp. 214-26). None of the physicians

testified, based upon a reasonable degree of medical probability, that the car accident in 1993 was a proximate cause of Ronwin's claimed shoulder injuries. (TT pp. 291, 292, 412). The physician which treated the neck injury testified that it was more likely than not that Ronwin's neck injury was caused by the 1991 accident. (TT pp. 364-65).

Given this testimony, the jury could have reasonably concluded that the 1993 accident was a relatively minor collision and that Ronwin sustained no compensable injuries. With all due respect, the information allegedly gathered by Juror Clinton is completely consistent with this conclusion. Accordingly, any claimed error is harmless at best.

Secondly, Ronwin has attempted to recharacterize his failures to (1) sustain his burden of proof at trial, and (2), demonstrate prejudice on appeal as alleged violations of "due process" by the lower courts. As previously indicated, no constitutional questions were raised on appeal to the Eighth Circuit. On certiorari, this Court will not consider claims neither raised nor determined below. Hoover v. Ronwin, 466 U.S. 558, 574 n.25 (1984); see Zobrest v. Catalina Foothills, 509 U.S. 1, 8 (1993); Adickers v. S. H. Kress & Co., 398 U.S. 144, 147 N.2 (1970).

Finally, aside from the claimed constitutional issues, no substantial or important questions of federal law have

been identified. Since the Eighth Circuit did not issue a published opinion, no conflict between decisions of two or more circuits of the United States Court of Appeal can be claimed to exist. With all due respect, merely claiming that the case presents "a matter of first impression in the entire federal jurisdiction," standing alone, does not create special and important reasons warranting discretionary review.

CONCLUSION

Because no compelling justification exists for the relief requested in this case, Ronwin's Petition for Writ of Certiorari should be denied.

Dated this 18th day of December, 1996.

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